

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FIESTA MART, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
ACON INVESTMENTS, LLC,)	
)	
Defendant.)	
)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 *et seq.* and 28 U.S.C. § 1332, Defendant ACON Investments, L.L.C. (“ACON”) hereby notices removal of the action titled *Fiesta Mart, LLC v. ACON Investments, LLC*, Cause No. 2018-82890, from the District Court of Harris County, Texas (the “State Court Action”) to the United States District Court for the Southern District of Texas, Houston Division. In support of this Notice of Removal, ACON states as follows:

1. This action is a civil action within the meaning of the Acts of Congress relating to the removal of cases.
2. Plaintiff initiated the State Court Action on November 16, 2018, with the filing of an Original Petition and Request for Disclosure (“Original Petition”). *See* Original Petition, attached as part of Exhibit A hereto.
3. ACON was served with a summons and the Original Petition on November 27, 2018.
4. The amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest, costs, and attorneys’ fees. *See* Exhibit A.

5. Plaintiff is a Texas limited liability company with its principal place of business in Houston, Texas. As a limited liability company, Plaintiff's citizenship is determined by its members. Despite a reasonable search of public records and court filings, ACON is unable to conclusively determine the membership of Plaintiff Fiesta Mart, LLC. *Cf. Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 108 (3d Cir. 2015) ("The membership of an LLC is often not a matter of public record.").

6. Defendant ACON is a Delaware limited liability company with its principal place of business in Washington, D.C. ACON has three individual members, who are natural persons domiciled in the State of Maryland.

7. Upon information and belief, Plaintiff is not a citizen of Delaware, Maryland, or Washington, D.C.

8. Consequently, upon information and belief, complete diversity exists between Plaintiff and ACON. *See Lincoln*, 800 F.3d at 108 ("[B]efore alleging that none of an unincorporated association's members are citizens of a particular state, a [party] should consult the sources at its disposal, including court filings and other public records. If, after this inquiry, the [party] has no reason to believe that any of the association's members share its state of citizenship, it may allege complete diversity in good faith.").

9. Therefore, this matter is a civil action over which this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 and which is removable to this Court under 28 U.S.C. § 1441.

10. Removal of this action is proper under 28 U.S.C. § 1446 because:

a. this Notice of Removal is being filed within thirty (30) days of ACON's receipt (through service or otherwise) of the Complaint;

b. this Notice of Removal is being filed within one (1) year of November 16, 2018, the date of commencement of this action for removal purposes;

c. ACON has not previously sought similar relief; and

d. a copy of all process, pleadings, and orders served upon ACON are attached as Exhibit A.

11. Because, upon information and belief, complete diversity exists between Plaintiff and Defendant and the amount in controversy exceeds the jurisdictional amount required by 28 U.S.C. § 1332, this Court is vested with subject matter jurisdiction over this action and the case is properly removable under 28 U.S.C. § 1441(b).

12. A true and correct copy of this Notice of Removal will be served upon all parties and the District Court of Harris County, Texas ("State Court"), promptly after the filing of this Notice, in accordance with the certificate set forth below and with the requirements of law. The clerk of the aforesaid State Court shall effect the removal, and the State Court shall proceed no further unless the case is remanded, as provided by law.

13. ACON reserves the right to amend or supplement this Notice of Removal.

Dated: December 13, 2018

Respectfully submitted,

/s/ Robert A. McNiel
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

Counsel for Defendants hereby certifies that this document was served pursuant to the Electronic Filing Procedures and by electronic mail on December 13, 2018.

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